NORTH AMERICAN ENERGY CONSERVATION, INC.

ORDER No. EA-103

I. BACKGROUND

Exports of electric energy from the United States to a foreign country are regulated and require authorization under Section 202(e) of the Federal Power Act (FPA) (16 U.S.C. §824a(e)).

On March 20, 1995, North American Energy Conservation, Inc. (NAEC) applied to the Office of Fossil Energy (FE) of the Department of Energy (DOE) for authorization to transmit electric energy to Canada. NAEC is a power marketer which has been authorized by the Federal Energy Regulatory Commission (FERC) to make sales of electric power at wholesale in interstate commerce, at negotiated rates. NAEC buys and sells electric energy for its own account; it does not own or control any electric generating or transmission facilities, nor does it have a franchised service area.

NAEC proposes to purchase surplus electric energy from electric utilities in the United States and to export this energy on its own behalf to Canada. The energy to be exported would be delivered to Canada over the international electric transmission facilities owned and operated by the New York Power Authority (NYPA), Niagara Mohawk Power Corporation (NMPC), Long Sault, Inc., Vermont Electric Transmission Company, the Joint Owners of the Highgate Project, and Maine Electric Power Company.

Notice of this application appeared in the Federal Register on April 19, 1995, (60 FR 19574) requesting that comments, protests, and petitions to intervene be submitted to the DOE by June 5, 1995. During the initial comment period, DOE received comments and a petition to intervene from El Paso Electric Company (EPE) and several requests to extend the comment period. In response to these requests, DOE extended the comment period to July 5, 1995, and also granted NAEC until July 26, 1995, to respond to all comments, protests, and petitions to intervene filed in this proceeding. During the extended comment period, DOE received comments and petitions to intervene from San Diego Gas & Electric Company (SDG&E), NMPC, and Ontario Hydro (Ontario). On July 20, 1995, NAEC submitted reply comments to the interventions filed during the extended comment period. In addition, on July 31, 1995, Edison Electric Institute (EEI) submitted comments that were dated June 29, 1995. On August 16, 1995, supplemental comments were submitted by Ontario. On September 1, 1995, NAEC submitted a response to the EEI late comments and Ontario's supplemental comments. As no protests were filed in opposition to the out of time comments by EEI and Ontario, DOE has included them in the Docket and given them appropriate consideration in rendering this final decision.

Many of the issues raised by commenters are identical to those contained in a similar export request by Enron Power Marketing (Enron) and already addressed by DOE in Order EA-102. That Order, issued on February 6, 1996, granted Enron authority to export electric energy to Mexico and was issued after all of the subject comments had been filed in this docket.

II. SUMMARY OF COMMENTS

A. PETITIONS TO INTERVENE AND PROTESTS

1. El Paso Electric Company

On June 5, 1995, EPE filed a petition to intervene and protest in this proceeding. EPE raises the same technical and legal issues in this proceeding as it did in response to Enron's application to export electricity to Mexico as a power marketer (Docket EA-102) and simply attached its comments in the Enron proceeding to be incorporated in this docket. EPE's Enron comments primarily addressed the reliability impacts of the proposal.

2. San Diego Gas & Electric

On July 5, 1995, SDG&E filed a petition to intervene, protest and comment in this proceeding. Although not named as a potential transmitter of power in the NAEC application, SDG&E asserts that decisions made in this proceeding directly impact SDG&E. SDG&E's comments also were a resubmittal of its earlier comments filed in the Enron proceeding and related to concerns over potential reliability impacts associated with an undefined export.

3. Niagara Mohawk Power Corporation

On July 5, 1995, NMPC filed a petition to intervene, protest, and request for further proceedings in this docket. NMPC owns two of the transmission facilities which NAEC proposes to use in transmitting electric energy to Canada. NMPC believes that the electric power market has not yet evolved to the point that would allow marketers to operate as they seek and asserts that waiving regulatory or reporting requirements for marketers may preclude DOE from making its required reliability determination. NMPC requests: (1) that NAEC be required to provide specific physical and operational information on its exports over NMPC facilities; (2) that any approval of the application be conditioned on adherence to applicable NERC guidelines and standards; and (3) that NAEC be required to comply fully with any existing transmission tariffs or agreements that it will use to implement the export.

4. Ontario Hydro

Ontario filed a petition to intervene on July 5, 1995, and filed supplemental comments on August 16, 1995. Ontario is the provincial electric utility of the Province of Ontario, Canada, and is interconnected to U.S. utilities. Ontario does not oppose the NAEC application, but raises several concerns and requests that DOE convene a technical conference. It notes that the electricity export authorizations associated with several of the existing international transmission lines between the United States and Canada contain energy limits as well as limits on power transfers. Ontario expresses concern about authorizing marketers to export unlimited amounts of energy across certain interconnections when the owners of those interconnections are limited as to the amount of energy they may export.

Ontario supports the view that DOE ought to base export limits on the power transfer limits of the international lines and not on annual energy flow. Ontario asserts that the energy limits contained in the existing electricity export authorizations appear to have little relevance to specific reliability concerns and that they are contrary to the free trade principles established by the North American Free Trade Agreement. Ontario suggests that DOE use this opportunity to eliminate the annual energy limits for existing and future export authorizations.

5. Edison Electric Institute

In comments filed on July 31, 1995, EEI suggests that the NAEC application should be denied because it did not contain the required information with which to assess the electric reliability impacts of its proposal. EEI also urges DOE to consider the current “open access” initiative before the FERC when evaluating this and future requests to export.

B. RESPONSE OF NAEC

On July 24 and September 1, 1995, NAEC filed response comments in this proceeding. NAEC reemphasizes that it seeks permission to use only available cross-border transmission capacity and suggests that there would be no reliability problem if a border utility were to purchase electricity from NAEC and transmit that energy to Canada on the utility's own account.

NAEC further objects to the participation in this docket by EPE and SDG&E since those systems are not part of the Eastern Interconnection and, therefore, NAEC's proposal could not be an identifiable threat to the reliability of their respective systems. NAEC also clarified the point that it is not requesting that DOE deny anyone the right to transmit energy up to the amount that could be reliably exported consistent with NERC guidelines. NAEC asserts that it is not seeking to deprive utilities of the right to use their own facilities.

III. ANALYSIS

The issue raised by EPE of FERC jurisdiction and authority to order retail wheeling is not relevant or a part of this DOE proceeding. Also, the issue of DOE's authority to order transmission service is not relevant, because that is not being done in this order.

The authority requested of DOE by NAEC under section 202(e) of the FPA is a necessary condition for exporting. However, even with this grant of authority, NAEC must still make the necessary commercial arrangements and obtain any and all other regulatory approvals which may be required in order to effect the export, including obtaining all necessary transmission access required to wheel the exported energy to the foreign purchaser.

In granting electricity export authorizations to power marketers, DOE has broadened the approach it always has taken. DOE always has predicated its reliability analyses for "traditional" entities (e.g., electric utility companies and power pools) on the assumption that the exported energy would be supplied from system power; i.e., provided from the exporting system's total supply resources, without associating the exported energy with any particular component of those resources. In fact, the total supply resources of traditional applicants usually includes power purchased from other systems or regions. DOE believes it is neither possible nor appropriate to look behind an export and consider the reliability impacts of delivering power purchased from other sources onto the exporter's system.

Electricity marketers put together a power portfolio by purchasing various power products from a host of power suppliers. Because a marketer does not own any physical system to which these products may be delivered, DOE does not have the same starting point for its reliability analysis that it would in the case of the more traditional exporter. However, all exports by marketers do have identifiable delivery points: the transmission systems contiguous with the border. Once the exported energy arrives at one of these border systems, the impact on reliability would be similar to that for exports which are supplied from the system power of that border system. DOE believes that the technical analyses used to support the issuance of electricity export authorizations to border utilities are sound and that DOE need not perform additional reliability assessments as long as the maximum rate of transmission for all exports through a border system does not exceed the previously authorized export limit.

This approach is applicable for exports by marketers over all existing international transmission facilities for which export authorizations have been issued and for which reliability studies have been performed. However, several of the international transmission lines over which NAEC seeks export authority are owned and operated by the New York Power Authority (NYPA). As an instrumentality of the State of New York, NYPA is non-jurisdictional to section 202(e) of the Federal Power Act. Consequently, DOE has never issued NYPA an export authorization which could be used to limit exports by NAEC and for which a reliability assessment has been prepared. In lieu of the reliability analyses which would have been performed for an export authorization by NYPA, DOE is utilizing the information contained in the report entitled, "Load & Capacity Data, 1995 Report of the Member Electric Systems of the New York Power Pool." This report is prepared and filed with the New York Public Service Commission pursuant to section 6-106 of the Energy Law of New York State. It will be made part of the record in this proceeding and included in the public docket. Section IX of this report lists the transmission transfer capabilities between the New York Power Pool (NYPP)[1] and surrounding electric systems, including Hydro-Quebec and Ontario Hydro. Since all of the major transmission interconnections between NYPP and Ontario Hydro are operated in parallel, it is appropriate to consider a single export limit for this "electrically logical" grouping of lines. Accordingly, the transfer capability between NYPP and Ontario Hydro (as identified in Section IX of the above report) has been used in the ordering language to limit exports by NAEC over all international transmission lines connecting the U.S. with Ontario Hydro. A separate limit has been assigned for exports over NYPA's 765-kV tie with Hydro-Quebec, because of the asynchronous nature of that interconnection.

One of the points raised by NMPC was that the 115-kV interconnections between Long Sault and Hydro-Quebec (Presidential Permit PP-24) are connected radially. In fact, these lines are used by NMPC to wheel energy from Canadian Niagara Mohawk (NMPC's Canadian

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[1] New York Power Pool is an association of NYPA and the seven major investor-owned electric utilities in New York State. NYPP dispatches power throughout New York State on a single-system basis and coordinates the development and operation of its members' production and transmission facilities.

affiliate) to radially connected load in Quebec. The Canadian “end” of these lines is connected to a small generator which also supplies energy to the same radial load. It would not be possible for NAEC to use these lines for the type of export transactions contemplated. Therefore, the lines authorized by Presidential Permit PP-24 are not included in the list of international transmission facilities over which NAEC is authorized to export.

Commenters raised the issue that the NAEC application does not provide all of the information required by DOE's regulations and that this deficiency precludes a proper assessment of the reliability impacts of the export as required by the statutory requirements of the FPA.

DOE never has applied the information filing requirements contained in its regulations in a rigid manner. Each application for authorization to export has unique commercial and/or technical issues which make rigid filing requirements impractical. Consequently, DOE has always used a flexible approach in determining the information necessary to evaluate the reliability impacts for a specific proposal to export. In addition to empirical studies and computer simulations, DOE has relied upon established industry guidelines, operating procedures and/or infrastructure as evidence that sufficient safeguards exist to maintain electric system reliability.

Present industry operating practices dictate that in order for electricity to be exported or, for that matter, moved anywhere in the U.S., two actions must be taken. First, the transaction must be scheduled with the appropriate control areas. Second, the exporter must obtain sufficient transmission access to wheel the electricity from the generating source to the border. The first requirement is almost a fait accompli. Since NAEC does not own or operate any generating or transmission facilities, it does not have the ability to move electric energy without the cooperation of the systems which do. With few exceptions, the generating sources from which NAEC would be purchasing electric energy are members of control areas and would have to schedule transactions with their respective control areas on behalf of NAEC. In deference to this point, the ordering language requires NAEC to abide by "...all reliability criteria, standards, and guides of the North American Electric Reliability Council and Regional Councils..." (NERC). This includes NERC's recently approved "Agreements in Principle on Scheduled Interchange," which specify the requirements of control areas in scheduling interchange. The Agreements also establish the responsibilities of purchasing and selling entities, like NAEC, that do not perform control area functions, but wish to schedule interchange.

In order to obtain sufficient transmission access to wheel the electricity to the border, NAEC must come to terms with the affected transmission systems and obtain any necessary regulatory approvals. In considering NAEC's request, the transmission systems would have to assess the reliability impacts of moving the export through their systems and, presumably, would only agree to provide service under terms and conditions that would not cause reliability problems on their own systems.

The electric power industry is vastly different today than it was in 1935, or when authority for the program was transferred to DOE from the Federal Power Commission in 1977, especially with the recent introduction of power marketers into the electric power industry. The passage of the Energy Policy Act of 1992, the signing of the North American Free Trade Agreement in 1993, and the issuance of FERC Order 888 in April 1996 have all promoted increased competition in energy markets in general, and the electric power market in particular. The interpretation and implementation of the statutory and regulatory requirements governing exports of electricity should be consistent with and account for these changes in the evolving electricity marketplace.

Comments by Ontario raised an issue that had not been identified in the initial power marketer export authorization issued by DOE to Enron. Specifically, can or should DOE require border system utilities to abide by the energy limits contained in existing export authorizations while authorizing marketers to export unlimited amounts of energy but at limited rates of transmission. DOE recognizes this obvious inequity and will address this issue in a future proceeding. Until that procedure is completed, exports by NAEC will be constrained by the same energy limits contained in existing export authorizations. Furthermore, the ordering language makes it clear that exports by NAEC will not be "charged against" (i.e., reduce) the energy limits which the holders of several export authorizations must now abide by.

IV. FINDING AND DECISION

EPE, SDG&E, NMPC, and Ontario are border utilities owning cross-border electric transmission facilities. As such, they have an interest which may be affected by the outcome of this proceeding. Accordingly, all petitions to intervene in this proceeding are granted, and protests are noted.

Because NAEC has no native load obligations usually associated with a franchised service area, and because the electric power purchased by NAEC for export to Canada would be surplus to the needs of those entities selling the power to NAEC, DOE finds that such exports by NAEC would not impair the sufficiency of electric supply within the United States. Furthermore, based on the above discussion and analysis, DOE finds that the proposed export, as conditioned and limited herein, would not impede or tend to impede the coordinated use of transmission facilities within the meaning of section 202(e) of the Federal Power Act.

The DOE also has assessed the potential environmental impacts associated with the authorizing of the proposed export and has determined that this action is among those classes of actions not normally requiring preparation of an environmental assessment or an environmental impact statement and, therefore, is eligible for categorical exclusion under Appendix B to Subpart D, paragraph B4.2 of the revised DOE Regulations implementing the National Environmental Policy Act of 1969. Documentation of the use of this categorical exclusion has been placed in this Docket.

V. ORDER

Based on the above finding, it is hereby ordered that North American Energy Conservation, Inc. (NAEC) is authorized to export electric energy to Canada under the following terms and conditions:

(A) The electric energy exported by NAEC pursuant to this Order may be delivered to Canada only over the following existing international transmission facilities for which assessments of the transmission limits for operation in the export mode have been made:

Owner	Location	Voltage	Presidential Permit No.
Joint Owners of Highgate Project	Highgate, VT	345-kV	PP-82
Maine Electric Power Co.	Houlton, ME	345-kV	PP-43

New York Power Authority	Massena, NY	765-kV	PP-56[2]
	Massena, NY	2-230-kV	PP-25
	Niagara Falls, NY	2-345-kV	PP-74
	Devils Hole, NY	230-kV	PP-30[3]
Niagara Mohawk Power Corp.	Devils Hole, NY	230-kV	PP-31[4]
Vermont Electric[5] Transmission Co.	Norton, VT	450-kV DC	PP-76

(B) Exports authorized herein shall not cause a violation of the terms and conditions contained in existing electricity export authorizations associated with the international transmission facilities identified in paragraph (A) above. Specifically:

(1) Exports by NAEC made pursuant to this Order shall not cause the total exports on the facilities authorized by Presidential Permit PP-82 to exceed an instantaneous transmission rate of 200 MW nor cause a violation of the following security constrained export limits:

Vermont Total Load (MW)	Security Constrained Maximum Export (MW)
1000	0
900	40
800	90
700	125
600	150
500	170

(2) Exports by NAEC made pursuant to this Order shall not cause the total exports on the facilities authorized by Presidential Permit PP-43 to exceed an instantaneous transmission

[2]The Presidential permit identified by DOE as PP-56 was issued by the FPC in Docket E-8414.

[3]The Presidential permit identified by DOE as PP-30 was issued by the FPC in Docket E-6798.

[4]The Presidential permit identified by DOE as PP-31 was issued by the FPC in Docket E-6797.

[5] In its application, NAEC included Vermont Electric Transmission Co.'s 450-kV DC line and two 345-kV AC transmission lines. While integral to the operation of the cross-border 450-kV line, the two 345-kV lines permitted to VETCo lie wholly within the U.S. and do not cross the U.S. border with Canada. Also, the electricity export authorization associated with this transmission line was issued in FE Order EA-76-C to New England Power Pool (NEPOOL).

rate of 500 megawatts (MW) pursuant to the export limits contained in the FPC Order in Docket No. E-7543, now FE Order EA-43.

(3) Exports by NAEC made pursuant to this Order shall not cause a violation of the following conditions contained in Order EA-76-C as they apply to exports over the ± 450-kV direct current transmission line authorized by Presidential Permit PP-76, as amended by PP-76A:

Exports Through	NEPOOL Load Condition	Export Limit
Comerford converter	Summer, Heavy	650 MW
Comerford converter	Winter, Heavy	660 MW
Comerford converter	Summer, Light	690 MW
Comerford converter	Winter, Light	690 MW
Comerford & Sandy Pond converters	All	2,000 MW

(4) Exports by NAEC made pursuant to this Order shall not cause the total exports on the facilities authorized by Presidential Permits PP-25, PP-30, PP-31 and PP-74 to exceed a combined instantaneous transmission rate of 550 MW.

(5) Exports by NAEC made pursuant to this Order shall not cause the total exports on the facilities authorized by Presidential Permit PP-56 to exceed an instantaneous transmission rate of 1000 MW.

(C) Any change to the export limits contained in Orders EA-82, EA-43, or EA-76-C resulting from an amendment of these Orders by DOE shall result in a concomitant change to the export limits contained in subparagraphs B(1), B(2), and B(3) above. Any request for changes to the exports limits in subparagraphs B(4) and B(5) above will be considered by DOE after submission by NAEC of appropriate information demonstrating a change in the transmission transfer capability between New York Power Pool and Ontario Hydro and Hydro-Quebec.

(D) NAEC may commence exports only over those international transmission lines identified in paragraph B for which NAEC provides DOE written evidence that sufficient transmission service has been obtained for delivery of the exported energy to the border.

(E) In scheduling the delivery of electricity exports to Canada, NAEC shall comply with all reliability criteria, standards, and guides of the North American Electric Reliability Council and Regional Councils, on such terms as expressed therein, and as such criteria, standards, and guides may be amended from time to time.

(F) NAEC shall conduct all operations pursuant to the authorization hereby granted in accordance with the provisions of the Federal Power Act and pertinent rules, regulations, and orders adopted or issued by the DOE.

(G) The authorization herein granted may be modified from time to time or terminated by further order of the DOE, but in no event shall such authorization extend beyond the date of termination or expiration of the Presidential permits referred to in Paragraph (A) above.

(H) This authorization shall be effective for a period of two years from the date of this Order. Within six months prior to the expiration of this authorization, NAEC may reapply for renewal of the authorization for a period of time longer than the original two-year period.

(I) This authorization shall be without prejudice to the authority of any State or State regulatory commission for the exercise of any lawful authority vested in such State or State regulatory commission.

(J) NAEC shall make and preserve full and complete records with respect to the electric energy exported to Canada. NAEC shall furnish quarterly reports to the DOE, within 30 days following each calendar quarter, showing the gross amount of electricity delivered and the consideration received during each month of the previous quarter, and the maximum hourly rate of transmission.

(K) Exports authorized herein shall be reduced or suspended, as appropriate, whenever a continuation of those exports would impair or tend to impair the reliability of the U.S. electric power supply system.

Issued in Washington, D.C., on May 30, 1996.

Anthony J. Como
Director
Office of Coal & Electricity
Office of Fuels Programs
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